DOCUMENT RESUME

ED 315 236 RC 017 292

AUTHOR Walls, Wemme E.
TITLE Educational Placement of the HIV-Infected Students in the Public Schools: Policy Considerations for Rural Educators.
PUB DATE Mar 89
NOTE 10p.; In: Education and the Changing Rural Community: Anticipating the 21st Century. Proceedings of the 1989 ACRES/NRSSC Symposium. See RC 017 257.
PUB TYPE Speeches/Conference Papers (150) -- Viewpoints (120) -- Information Analyses (070)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Acquired Immune Deficiency Syndrome; Adolescents; Children; Communicable Diseases; Confidentiality; Disclosure; *Disease Control; Elementary Secondary Education; Health Education; Laws; *Policy Formation; Public Policy; *Public Schools; *Rural Education; Social Discrimination; *Student Placement; Student Rights
IDENTIFIERS Education of the Handicapped Act 1970; Rehabilitation Act 1973 (Section 504)

ABSTRACT

This paper focuses on new developments in medicine and in the courts that may have crucial implications for existing policies related to the educational placement of the HIV-infected student. Salient medical and legal aspects related to the educational placement and school attendance of HIV-infected children are reviewed. Recommendations for policy-making are discussed including: establishing a resource network for disseminating and implementing new information; the awareness of pertinent state education, civil rights, and public health law; knowledge of existing public and educational policies at national, state, and local levels; and issues regarding the infected child's right to confidentiality. Considerations related to the unique aspects of the rural setting are reviewed. The paper also reviews results of a research study that includes: (1) medical evidence supporting decision-making policies on admission or exclusion of HIV-infected students in the public schools; (2) an examination of state anti-discrimination laws, state special education laws, state communicable disease laws, and state and selected local policy statements in 16 states; (3) an analysis of the relevant legal issues of the Education of the Handicapped Act, Section 504 of the Rehabilitation Act of 1973, and constitutional issues pertinent to educational placement of HIV-infected children; and (4) case law "in point" or "analogous" to the issues addressed. (TES)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☒ This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

Wemme E. Walls

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

ED315236

Paper presented to:
The Ninth Annual Conference of the American Council on
Rural Special Education (ACRES)/National Rural and Small Schools Consortium (NRACC)

Education and the Changing Rural Community: Anticipating the 21st Century

Educational Placement of HIV-infected Students in the Public Schools: Policy Considerations for Rural Educators

RC 017292

BEST COPY AVAILABLE

Wemme E. Walls, Ed.D.
Institute for the Study of Exceptionalities
Virginia Tech
College of Education
103 Jackson Street
Blacksburg, VA 24061
(703) 961-5167

EDUCATIONAL PLACEMENT OF HIV INFECTED STUDENTS IN THE PUBLIC SCHOOLS: POLICY CONSIDERATIONS FOR RURAL EDUCATORS

In recent years with the passage of the Education of the Handicapped Act (1975) public schools have greatly expanded programs for children with special educational needs. However, educational programs and policies have not yet met the particular health and educational needs of children with chronic illnesses (Hobbs, 1985). Identification and protection of chronically ill children as a "group" with guarantees and protections of the EHA has been difficult and continues to be controversial. The issues that are specific policy questions for the chronically ill child encompass specific issues which are as controversial for the child with human immunodeficiency virus (HIV) infection. Due to the additional concerns of health and safety to others the educational placement of HIV-infected children involves a myriad of issues facing regular education and special education administrators and educators, and public health officials.

The purpose of this paper is to focus on new developments in medicine and in the courts that may have crucial implications for existing policies related to the educational placement issues of the HIV-infected student. A review of the salient medical and legal aspects related to the educational placement issues of school attendance for children with the HIV infection is presented to provide information that will serve as a resource to public school personnel who are among the professionals that must make informed decisions on public school attendance policies for students with a lethal, complex, and controversial disease. Recommendations for decision-making and policy will be discussed including awareness of pertinent state education, civil rights, and public health law; establishment of a vehicle for maintaining a network of resources for disseminating and implementing new information; knowledge of existing public and educational policies at national, state, and local levels to support educational policy and decision-making that is reasonable and sound; and issues of confidentiality and the infected child's right to privacy. Policy considerations related to the unique aspects of the rural setting will be reviewed to serve as an information resource for school officials to enable them to make informed proactive decisions. The paper reviews results of a research study that includes (1) medical evidence that supports decision-making policies on admission or exclusion of HIV-infected students in the public schools; (2) an examination of state anti-discrimination laws, state special education laws, state communicable disease laws, and state and selected local policy statements in sixteen states; (3) an analysis of the relevant legal issues of the Education of the Handicapped Act (EHA), Section 504 of the Rehabilitation Act of 1973, and constitutional issues pertinent to educational placement of HIV-infected children; and (4) case law "in point" or "analogous" to the issues addressed.

The HIV infection which envelopes what has been referred to as Acquired Immunodeficiency virus (AIDS) and AIDS-Related Complex (ARC) conditions, has emerged as a

serious public health problem in this country. It is an issue of social, political, medical, economic, and legal controversy. Mass media coverage and the growing complexity of scientific information present a confusing picture to the public at large. Issues surrounding the educational placement of public school children who are identified with the virus are equally controversial, complex, and confusing to educators and school officials who are responsible to the communities that support the local educational agencies (LEAs). School officials are placed in a position of balancing the duty to protect the health and safety of the students and the duty to protect the school system.

Transfusion-associated and perinatal transmission cases of AIDS and the HIV-infection account for a small percentage of overall cases in this country. Approximately 1.5% of the CDC reported cases of AIDS are among infants, children, and adolescents. Although the percentage is small when looking at overall numbers of reported AIDS cases, the numbers are expected to increase dramatically with estimates of ten times the current numbers within five years (Baltimore and Wolff, 1986; Phair, 1987).

The appearance of AIDS cases in children and the well-publicized issue of school attendance for several of these children is of concern to public health, school health and school officials faced with the educational placement decisions of an issue that has attracted community interest and concern. The fear of the unknown can have serious ramifications legally, ethically, and socially. The public schools are in a unique position to assume a role in providing to staff, pupils, parents, and the community both an awareness and interest in one of the most complex issues of the decade. Rural educators are faced with additional considerations due to the general educational delivery concerns of the rural setting (Helge, 1983).

Medical experts in the field of AIDS research generally support the assumption that the HIV infection is not transmitted easily or casually. However, controversy continues as to the solidity of this assumption causing a potential for continual misunderstandings in dealing with the disease and the individuals infected. Public schools are among those subjected to this controvery. When there is controversy among the professionals on the issues of "casual" transmission, some school systems have been understandably resistant in accepting the assurances of the medical profession in developing policies on procedures for educational placement of children with the virus (Weiner, 1986).

Local community constraints and political controls complicate the decision-making process. Issues differentiating the rural school setting from the urban setting may also add to the complexities. Geographic isolation, informal systems of communication and lack of availability of professional resources are among many of the issues that the rural educator must additionally address when considering policy for educational placement of the HIV-infected student. Although many school districts have developed policies based on immediate need, many communities have acted in a proactive manner, anticipating that inevitably a child or children with the HIV-infection will be attending their schools. The "inevitability" continues to become more apparent, in part due to the movement of the virus into the heterosexual community, increasing the numbers of those infected with the virus; and thus, increasing the numbers of children born with the AIDS virus through perinatal transmission.

The HIV infection is not known or suspected of being transmitted from one child to another in schools, day-care, or foster-care settings. Transmission would necessitate exposure of the virus from open cuts to the blood or other body fluids of an infected child, a highly unlikely occurrence in the school environment. Routine safety procedures for handling blood or other body fluids are effective in preventing transmission from children with the HIV-infection to other children in classroom settings (Koop, 1986). Therefore schools need no special precautions to protect others in the environment from possible transmission of the virus with exception of the adoption of routine precautions for handling blood and body fluids in cases of accident or injury.

The National CDC guidelines first issued in August of 1985 recommended that, in most cases, school-age children with the AIDS virus be allowed to enter and/or remain in school. CDC recommendations suggest restrictive environments as appropriate for pre-school children, children with open lesions, or children lacking control of body secretions who are HIV-infected. In addition to the health and safety guidelines, the CDC recommendations recognize that there are legal issues to be considered in forming guidelines for the education of infected children, including the constitutional rights of the individual; the protections of handicapped children under the EHA and Section 504 of the Rehabilitation Act of 1973; and the confidentiality of student's school records under the Family Education Rights and Privacy Act (FERPA) of 1974 and the regulations for EHA. National education groups such as the National Education Association, American Federation of Teachers, and the Council of Exceptional Children have issued policies on the HIV-infection and educational placement issues that parallel National Centers for Disease Control (CDC) recommendations of case-by-case decision-making on attendance issues (Weiner, 1986).

Legal actions that approximately parallel the publications of the CDC guidelines were brought in Indiana, New York, New Jersey by parents and others concerned with the school attendance of children diagnosed with AIDS (White v. Western School Corp., 1985; District 27 v. Board of Education of the City of New York, 1985; Board of Education of the City of Plainfield v. Cooperman, 1985). To date the courts have generally held that children with AIDS should be permitted to attend school unless attendance of the child is contrary to reasonable medical judgments of the child's physician and/or public health officials. Analogous cases involving school attendance of children with herpes simplex virus (HSV) and hepatitis B virus (HBV) have been previously resolved in favor of infected children who were seeking entrance to classrooms (Council Bluffs Education Association v. Council Bluffs Community School District, 1984; New York Association for Retarded Children v. Carey, 1979; Community High School District #155 v. Denz, 1984).

In November of 1986, the first decision of a case "in point" concerning a school attendance case was decided by a federal court in California. The finding of the court held that AIDS is a protective handicap under Section 504 of the Rehabilitation Act of 1973, thus the school district involved in the suit was required to "reasonably accommodate" the child's handicap. Additionally, the court held that the school district failed to show that the child presented a risk to others rejecting 1985 CDC guidelines that suggest biting as high risk behavior which may require a more restrictive environment (Thomas v. Atascadero, 1986).

Emerging issues in AIDS litigation and legislation that may have impact on school attendance decisions include the exclusion of children not identified with AIDS or HIV infection, but in household contact with the virus (Matthews & Neslund, 1987; Weiner, 1986), and/or cases of children who are asymptomatic carriers of the HIV infection and encounter difficulties in attending school (Phippa v. Saddleback, 1986).

AIDS has already had a profound effect on the United States medical community. The growing array of cases and legislation indicates that AIDS-related legal issues in the public health and education sectors will have significant influence on public school policy and decision-making related to placement of children with AIDS, ARC, or the HIV infection in public school classrooms. The controversy that surrounds the educational placement in the public schools of children with AIDS, ARC, or asymptomatic virus continues, as medical and legal issues unfold.

School officials are often unaware of court decisions and the implications of those decisions on problem-solving, decision-making, and policy issues. Some school officials have been faced with the additional burden of decision-making and policy recommendations for an issue in which there has been no previous policy and no conclusive information on the medical and legal aspects of the concern.

A widely publicized example of a potential dilemma facing school systems related to the emerging issue of AIDS and its broader counterpart, "communicable disease," is the Kokomo, Indiana case of White v. Western School Corp. (1985). In defending the policy of excluding the fourteen-year old from the classroom, school officials supported a position that was consistent with communicable disease law in the state, "although the state had issued guidelines directing schools to admit most students with the AIDS virus" (Weiner, 1986).

There is the need to clarify existing laws and to anticipate emerging laws that impact upon the determination of educational placement of children with the HIV infection. A study that examines emerging precedents and patterns in a previously uncharted area of law, such as AIDS litigation and legislation, will provide information that will enable school officials to discern the basis for the decisions rendered or the possible course of action that might be anticipated in future disputes. In delineating precedents and patterns, school officials will be able to make informed proactive decisions that will promote preventative law and policy, both cost-effective and time-efficient to the educational system.

Decision-makers should be familiar with medical evidence and legal issues that may both directly and indirectly affect policy. Informed school personnel provide the impetus for the establishment and continuance of positive, well-developed dialogue among staff, students, parents, and the community.

While there is no medical evidence to support the exclusion of children from regular school attendance based on suspicion of or identification of the HIV infection, in presenting medical evidence for the establishment of policy in educational decision-making, it must be stressed that the nature of the information is dynamic. Individuals involved in and responsible for policy decisions must keep abreast of new developments as they are reported, in order to provide accurate information and knowledgeable leadership. The Centers for Disease Control (CDC) and the American Academy of Pediatrics (AAP) recommendations on school attendance provide guidelines that suggest that some HIV-infected students may pose a greater risk than others and a more restrictive environment may be warranted for those students. CDC and AAP guidelines and recommendations provide a basis for arguing that there is minimal risk of transmission of the HIV infection in casual settings, such as the classroom.

In 1987, the *Report of the Surgeon General's Workshop on Children with HIV Infection and Their Families* issued recommendations that support the existing CDC and AAP guidelines as adequate resources in most respects with modifications suggested as they relate to the preschool population. In the *Report* it is noted that "it should become possible for AIDS to be considered with neither more of less emotion than other severe illnesses of infancy and childhood. Key issues of epidemiology are poorly understood by most segments of society. A concerted community effort should be undertaken. " (Recommendation 8) Well-informed school officials responsible for policies and procedures on educational placement are in the best position to educate and inform parents, children, and staff on an issue that is often misunderstood. Awareness of sound medical evidence to support educational decision-making provides a means of projecting well-grounded information to the school population and community at large.

The need for further study in the area of medical aspects related to educational placement issues of HIV-infected students includes efforts to isolate the unique needs of the high risk groups specific to childhood and adolescence, such as the sexually abused and/or the substance abuser. Adolescents represent a unique subset of individuals whose specific needs must be addressed in communicating the circumstances surrounding transmission and contraction of the virus. Additional needs for study include the implications of the disproportionate number of urban and minority children and adolescents infected with or at-risk for transmission of the HIV infection and the impact the spread of the virus will have on these groups, medically and educationally. Future study to address confidentiality is warranted. A comparison of attitudes and perceptions between school personnel in districts

that have direct need to know policies for all individuals responsible for the education of the HIV-infected student and those who have strict confidentiality with complete anonymity is suggested as one measure to evaluate the degree of stigma and fear that may be associated with the issue.

Emerging legal issues presented by the AIDS controversy primarily focus on the aspects of educational placement and provision of services for children in the public schools with the HIV infection. Of significance are the constitutional issues of equal protection and right to association, the determination of qualifying handicap under Section 504, and the application of the EHA to children with AIDS or the HIV infection. School personnel should be advised that while an HIV-infected student may not necessarily be identified as "handicapped" under EHA, the HIV-infected student is deemed as "handicapped" for purposes of protection under Section 504.

Federal judicial interpretations support the content that AIDS and the continuum of illnesses known as the HIV infection qualify as a protected handicap under Section 504 of the Rehabilitation Act indicating that an automatic exclusion policy of children with the HIV infection from public schools should be viewed as a violation of Section 504 and its implementing regulations.

The EHA defines "handicap" more narrowly than section 504 and not all children deemed "handicapped" for purposes of Section 504 will necessarily qualify as "other health impaired" (OH). AIDS (and the HIV infection) may or may not be considered as a "communicable disease" under state law; and may or may not be considered "OHI", dependent upon state definitional criteria.

For most purposes of the programming under the EHA, children with AIDS or with the HIV infection are not educationally handicapped merely because of the illness. The status of the child in regard to special programs depends upon the ability to perform in the regular classroom without adverse effects. If it is determined that the HIV-infected child requires special education services, EHA regulations apply. Although the EHA recognized that not all children can be placed in a normal school environment, the statute does not require that a decision not to mainstream be justified by evidence that reflects the child's special needs.

State administrative guidelines, with the exceptional of the regulatory status of procedures in Pennsylvania and New Jersey are primarily advisory in nature. Local education agencies have the primary responsibility for establishing educational policies and procedures on the issue. Individuals responsible for policy decisions should be familiar with state and national trends that may directly and/or indirectly affect policy.

Medical evidence at the present time strongly suggests that policies of exclusion would hold up constitutionally under the equal protection clause of the Fourteenth Amendment since no *rational* basis for excluding children from public school settings exists unless individual circumstances warrant the exclusion. Additionally, implementation of an exclusionary policy would probably be considered more intrusive than necessary and may be considered an infringement of property and freedom of association rights. As medical knowledge continues to emerge, justification for infringement upon the fundamental rights of the individual may shift. In the school environment the balance must be made between the rights of the individual to participate in school programs weighed against the potential of harm to others in the same environment.

AIDS (and the HIV infection) is a topic of medical, legal, social, economic, and educational speculation and concern. The educational decision-maker must be knowledgeable in communicating well-informed policy in educational issues concerning this topic. The rural educator must have a strong vehicle of communication to translate information to the community setting. A network of resources should be developed and a vehicle in place for

disseminating and implementing new information as it develops.

The following are general recommendations for the educational decision-maker for the development of educational placement policy of HIV-infected children in the public schools.

1. In developing and administering policy, school administrators should establish and maintain open communication with the major policy and rule-makers in the state. Knowledge of existing public agency policies at the national, state and local level supports educational policy that it sound and reasonable. AIDS policy direction may be under the jurisdiction of education officials, public health officials, or both. Interagency collaboration is crucial to efficient, concise, and accurately administered policy recommendations.

2. The National Center for Disease Control (CDC) recommendations on the educational placement of HIV-infected student provide a *guide* when developing eligibility criteria for admission and/or exclusion of HIV-infected students in the public schools. In the school environment the balance must be made between the rights of the individual to participate in school programs weighed against the potential of harm to others in the school environment.

3. Although state laws may differ as to the interpretation on whether the HIV-infected child should be covered by EHA, it is suggested that schools include in determinations of policy information on the responsible agent for education of these children within the schools, be it regular or special education.

4. Statutory and regulatory requirements of the EHA and Section 504 of the Rehabilitation Act provide guidance for policy and decision-making concerning educational placement issues. The use of EHA procedures for case-by-case determination to provide clarity in decision-making is suggested. However, in utilization of EHA procedures it is advisable to specify whether the use is for convenience or as a basis of eligibility for special education services.

5. Routine precautions should be followed by all school personnel regardless of the presence or absence of an HIV-infected individual. *There is no guarantee that knowledge of the infected child will increase precaution.* An open usage policy where all school personnel are trained in precautionary procedures provides a vehicle for a safe school environment allowing for strict confidentiality to be maintained in an attempt to respect the child's right to privacy, if a HIV-infected student is present in the local public schools or district.

6. Case-by-case review, as recommended in CDC guidelines is suggested to determine if there is anything in the child's neurological, physical or emotional behavior that would make an unrestricted environment inappropriate. Suggested panel review might entail two aspects: (a) determination that the child is well enough to attend school without undue risk to self, and (b) determination that the child's behavior does not pose an increased risk of transmission of the HIV-infection to others in the classroom. Composition of the panel should include representatives of medical, public health and educational agencies within the community. There is no evidence to support that identification of the infected child is necessary for determination of placement status. A procedure should be in place for periodic review.

7. Special education referral is suggested, only after panel review, if there is a determination that the physical condition of the child may have or has had an adverse effect on the child's learning.

8. The number of persons knowledgeable of an infected child's condition should be kept at a minimum with disclosure only to those with a direct need to know. School policies and procedures that argue for disclosure of identity as a precautionary safeguard are not necessarily consistent with medical evidence that suggests routine safety procedures are effective in preventing the transmission of HIV. The decision of whether or not to disclose information regarding the HIV-infected student is most appropriately placed with those responsible for the protection of the HIV-infected child's health (e.g., the parents and the child's physician).

9. Awareness of sound medical evidence to support educational decision-making provides a means of projecting solid grounded policy to the school and community at large. Dependent upon district size, a means of information-gathering should be in place to provide continuous up-dating of both medical and legal issues related to the educational placement of HIV-infected students. A network of resources should be developed for disseminating and implementing new information as it develops.

REFERENCES

Baltimore, D., & Wolff, S.M. (Chairs). (1986). Confronting AIDS: Directions for public health, health care and research (Institute of Medicine/National Academy of Sciences Report). Washington, DC: National Academy Press.

Hobbs, N., and Perrin, J.M. (Eds.). (1986). Issues in the care of children with chronic illness. San Francisco: Jossey-Bass Publishers.

Phair, J.P., Rapoza, N.P. (1987) . The Challenge of AIDS for physicians today: Information on AIDS for the practicing physician. [Monograph]. American Medical News, 30 (2) (Suppl. 1), 5 - 6

Koop, E. (1986). Surgeon General's report on acquired immune deficiency syndrome. In Journal of American Medical Association. (1986, November, 28), 256 (20), 2783 - 2789

Matthews, G.W., & Neslund, V.S. (1987). The initial impact of AIDS on public health law in the United States - 1986. Journal of the American Medical Association, 257(3), 344 - 352

Weiner, R. (1986). AIDS: Impact on the schools. Arlington, VA: Capitol Publications, Inc.